

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

YANG ZHANG)	1:15CV0720
)	
Plaintiff)	
)	JUDGE JAMES S. GWIN
v.)	(Mag. Judge Kenneth S. McHargh)
)	
NICOLE CLEVINGER, et al.,)	
)	
Defendants)	REPORT AND
)	<u>RECOMMENDATION</u>

McHARGH, MAG. JUDGE

Currently before the court is the court's Order to Show Cause why this action should not be dismissed for failure to prosecute. (Doc. 48.)

Plaintiff Zhang failed to appear at the Case Management Conference, held before this court on September 16, 2015. Counsel for plaintiff did appear, reported that her client was in California, and reported that she was unable to procure his attendance at the CMC. She indicated at that time that the lack of communication from her client would probably lead her to file a motion to withdraw, which she subsequently filed (doc. 45).

The court scheduled a telephone conference for October 8, 2015, to address counsel's motion to withdraw. Counsel for plaintiff appeared via telephone (as did defendant Clevenger), but counsel reported again that she was unable to procure plaintiff's attendance at the telephone conference. Counsel indicated that she had

had no direct communication with her client since early summer 2015, and that he had ceased responding to her e-mails.

Therefore, plaintiff Zhang was ordered to show cause (1) why the court should not grant counsel Lei Jiang's motion to withdraw, and, (2) why the court should not dismiss this action for failure to prosecute. (Doc. 48.)

Plaintiff Zhang was served the Order to Show Cause at his last known street address, provided by counsel, and at his e-mail address. Zhang was ordered to respond to the Order to Show Cause within fourteen (14) days of the receipt of the Order, either (a) by counsel entering an appearance in this court on his behalf, or (b) by contacting the court directly, either by telephone or via email. Zhang was also advised to provide written confirmation of his intent to proceed, as well as current contact information. Zhang was warned that failure to respond within the fourteen day period could result in the court dismissing this action sua sponte for failure to prosecute. (Doc. 48.)

The Order to Show Cause was issued on Oct. 8, 2015. (Doc. 48.) Allowing three days for U.S. Mail service, and the fourteen days provided by the Order, the period within which a response was allowed has passed. Therefore, the court has (separately) granted counsel's motion to withdraw, and now recommends that this

action (against the remaining defendant¹, Nicole Clevenger) be DISMISSED for failure to prosecute.

RECOMMENDATION

It is recommended that this action (against the remaining defendant, Nicole Clevenger) be DISMISSED for failure to prosecute.

Dated: Nov. 3, 2015

/s/ Kenneth S. McHargh
Kenneth S. McHargh
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Courts within fourteen (14) days of receipt of this notice. Failure to file objections within the specified time WAIVES the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

¹ Default judgment was granted earlier against defendant Roderick Byers. (Doc. 37.)